

## **REMARKS**

### **1. Interview Summary**

The Applicants thank the Examiner for the telephone interview of November 26, 2007. The Applicant's representative Joel G. Landau and Andrew B. Chen, both of Steptoe & Johnson LLP, participated in the telephone interview. The subject matter of the telephone interview was a proposed amendment to claim 1 including the claim element, "verifying a physical presence of the user at the geographic location." The Applicants and the Examiner did not reach an agreement regarding patentability.

### **2. Election/Restriction Requirement – claims 77-84**

The Examiner withdrew claims 77-84 from consideration as being directed to a non-elected invention that is independent or distinct from the invention originally claimed. Specifically, the Examiner stated that claims 77-84 would be classified in 369/24.02. As such, the claims remain withdrawn, and the Applicants reserve the right to file a divisional application directed to claims 77-84.

### **3. Claim Rejections – 35 U.S.C. § 103(a) - claims 1, 2, 4-8, 10-21, 23, 24, 26-41, 43-49, 51-68, and 70-76**

The Examiner rejected claims 1, 2, 4-8, 10-21, 23, 24, 26-41, 43-49, 51-68, and 70-76 under 35 U.S.C. § 103(a) as being obvious over Goertzel in view of Shaffer. Claims 4, 5, 10, 14, 17, 35-41, 43-47, 51, 56, 57, and 61 have been canceled, thereby rendering the rejection moot for those claims. The Applicants respectfully traverse the rejection. For the sake of brevity, the rejections of the independent claims are discussed in detail on the understanding that the dependent claims are also patentably distinct over the prior art, as they depend directly from their respective independent claims. Nevertheless, the dependent claims include additional features that, in combination with those of the independent claims, provide further, separate and independent bases for patentability.

Independent claims 1 and 30 recite the following claim elements, not disclosed, taught, or suggested by either Goertzel or Shaffer, and not rendered obvious by Goertzel in view of Shaffer:

- a gaming card having security data for identifying the user;
- a card reader ... wherein the card reader includes a time out feature that prompts the user to insert the gaming card into the card reader at an appropriate time to verify that the user is physically present at the user's geographic location;
- the authenticator including a challenge and response system for ... verifying an identity of the user based on the security data, wherein the verifying the identity of the user includes issuing a challenge based on the security data.

The "physical presence" claim element is supported in the Specification at least at p. 10, l. 27 – p. 33, l. 6. The "time out" claim element is supported in the Specification at least at p. 10, l. 28 – p. 11, l. 17. The identity verification claim element is supported in the Specification at least at p. 10, ll. 5-18. The physical presence, time out, and identity verification elements have been added to independent claims 1, 30, and 48.

Goertzel's challenge and response authentication does not verify the physical presence of a user at the geographic location, does not provide a time out feature, and does not verify an identity of the user based on security data, wherein the security data is stored on a gaming card entered by the user in response to a prompting at an appropriate time. Goertzel discloses only one challenge and response embodiment of authentication—NTLM, based on the user's password. Accordingly, a consumer may circumvent the NTLM by using a commercial software product, such as Norton pcAnywhere, to remotely enter the password (see Goertzel, 16:35-47). Further, because Goertzel's security issues are based on the logical<sup>1</sup> pathway of connection, not the geographical pathway of connection, Goertzel provides no incentive to verify the physical presence of the user. In fact, Goertzel discloses that,

[a]s can be readily appreciated, as used herein, the term 'location' is a logical concept related to the type of location connection rather than a physical concept related to the distance from which the connection is originating.

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<sup>1</sup> E.g., via remote access server (Goertzel, 5:46) or local intranet users (Goertzel, 6:54).

(Goertzel, 5:12-15). “When the prior art teaches away from combining certain known elements, discovery of successful means of combining them is more likely to be nonobvious.”<sup>2</sup> See also M.P.E.P. § 2144.05 entitled, *Rebuttal Of Prima Facie Case Of Obviousness* (stating that “a prima facie case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention”).

Likewise, Shaffer does not disclose the claim elements of verifying the physical presence of a user at the geographic location, providing a time out feature, and verifying an identity of the user based on security data, wherein the security data is stored on a gaming card entered by the user in response to a prompting at an appropriate time. Although Shaffer teaches a relational database associating zip codes and telephone numbers, Shaffer does not overcome the shortcomings of Goertzel. Every Shaffer embodiment is directed to providing commercial services such as driving directions to local businesses (see Shaffer, 15:45-50). In stark contrast, the claimed elements are directed to preventing illegal transactions within a geographic location governed by a jurisdiction. With mutually exclusive goals, Shaffer provides no incentive to verify the physical presence of the user at the geographic location, as claimed. Therefore, the Applicants respectfully submit that claims 1, 2, 6-8, 11-21, 23, 24, 26-35, 37-41, 43-49, 52-55, 58-60, 62-68, and 70-76 are not obvious over Goertzel in view of Shaffer.

#### **4. Claim Rejections – 35 U.S.C. § 103(a) – claims 22, 25, and 69**

The Examiner rejected claims 22, 25, and 69 under 35 U.S.C. § 103(a) as being obvious over Goertzel. The Applicants respectfully traverse the rejection. The Applicants note that claims 22 and 25 depend from independent claim 1, and claim 69 depends from independent claim 48.

As set forth in Section 3 of this Paper, the Applicants respectfully submit that independent claims 1 and 48 are not obvious over Goertzel. Therefore, at least by virtue of their dependence from claim 1, claims 22 and 25 are not obvious over Goertzel, and at least by virtue of its dependence from claim 48, claim 69 is not obvious over Goertzel. Furthermore, claims 22,

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<sup>2</sup> *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395 (2007).

25, and 69 include additional features that, in combination with those of the independent claims from which they depend, provide further, separate and independent bases for patentability.

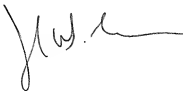
**CONCLUSION**

The Applicants have made an earnest and *bona fide* effort to clarify the issues before the Examiner and to place this case in condition for allowance. Reconsideration and allowance of all of claims 1, 2, 6-8, 11-34, 48, 49, 52-55, 58-60, and 62-76 is believed to be in order, and a timely Notice of Allowance to this effect is respectfully requested.

The Commissioner is hereby authorized to charge the fees indicated in the Fee Transmittal, any additional fee(s) or underpayment of fee(s) under 37 C.F.R. §§ 1.16 and 1.17, or to credit any overpayments, to Deposit Account No. 194293, Deposit Account Name STEPTOE & JOHNSON LLP.

Should the Examiner have any questions concerning the foregoing, the Examiner is invited to telephone the undersigned attorney at (310) 734-3200. The undersigned attorney can normally be reached Monday through Friday from about 9:00 AM to 6:00 PM Pacific Time.

Respectfully submitted,



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